

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, May 16, 2002
9:02 a.m. - 9:50 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:
Robin J.P. Riley
Notary Public

A T T E N D E E S

Chelle Konyk, Chairman
Robert E. Basehart, Vice Chairman
Mr. Raymond Puzzitiello
Mr. Bart Cunningham
Ms. Nancy Cardone
Mr. Joseph Jacobs
Mr. William Sadoff
Mr. Stanley Misroch

Jon MacGillis, Principal Planner
David Cuffe, Civil Engineer II, Land Development
Amy Petrick, Asst. County Attorney
Alan Seaman, Senior Planner, Zoning
Damon Kolb, Planner 1, Zoning
Miradieu Aubourg, Planner 1, Zoning
Juanita James, Secretary

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P R O C E E D I N G S

CHAIRMAN KONYK: I'd like to welcome everybody to the May 16th, 2002 Board of Adjustment meeting and start with the roll call and declaration of quorum.

MS. JAMES: Mr. William Sadoff.

MR. SADOFF: Here.

MS. JAMES: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. JAMES: Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. JAMES: Ms. Chelle Konyk.

CHAIRMAN KONYK: Here.

MS. JAMES: Mr. Robert Basehart.

VICE CHAIRMAN BASEHART: Here.

MS. JAMES: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. JAMES: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. JAMES: Mr. Stanley Misroch.

CHAIRMAN KONYK: Let the record reflect that we have proof of publication on the Palm Beach Post on Thursday, April 18th. The next item on the agenda are remarks of the chair. Those of you who are not familiar with how the Board conducts its business, the hearing is divided into two parts, the consent and the regular agenda.

Items on the consent agenda are items that have been recommended for approval by staff with or without condition. The applicant agrees with the conditions, there's no opposition from the public and no Board member feels the item warrants a full hearing. If there is opposition from the public, a Board member objects or the applicant does not agree with the conditions, the item will be reordered to the regular agenda.

Items on the regular agenda are items that the staff has recommended for approval. The applicant agrees with those recommendations.

There's no opposition from public and no Board member feels the item warrants a full hearing. If your item is on the regular agenda, it will be introduced by staff.

I said that wrong, didn't I? Items on the regular agenda are items that have been recommended for denial by staff or the applicant doesn't agree with the conditions or the Board members feel it warrants a full hearing. And if your item is on the regular agenda, it will be introduced by staff.

The applicant will have their opportunity to give their presentation. The staff will give their presentation. At that point we'll hear from the public. After that it's closed, the item will be discussed and voted on by the Board.

Next item on agenda is approval of the minutes of the April meeting. Everybody received a copy of the minutes. Does anybody have any corrections?

MR. CUNNINGHAM: Approved.

CHAIRMAN KONYK: Motion to approve by Mr. Cunningham.

VICE CHAIRMAN BASEHART: Second.

CHAIRMAN KONYK: Second by Mr. Basehart.

Any opposition? Motion carries unanimously.

CHAIRMAN KONYK: The next item on the agenda is the remarks of zoning director.

MR. SEAMAN: The only thing I wanted to comment is you have a certificate up there for Jonathan Garver (phonetic), I think, to sign.

That's it.

CHAIRMAN KONYK: Are there any changes to the agenda?

MR. SEAMAN: No, there are not.

CHAIRMAN KONYK: Okay. Then we'll begin. We have no withdrawn items. The first item on the agenda is a postponed item. Previously postponed twice. The item number is BA2002-011, Kim Juran, agent for Trump International Golf Course. Is the agent present?

MR. SEAMAN: She's just been called to remind her.

MS. KONYK: This isn't by right either.

MR. SEAMAN: It's not by right right now. The reason it's been postponed is that we're requesting a graphic report on the projectile of golf balls leaving the golf course and some other pertinent information that would help justify.

CHAIRMAN KONYK: Go ahead.

VICE CHAIRMAN BASEHART: We don't have a staff report in our package for this, do we?

MR. SEAMAN: No.

VICE CHAIRMAN BASEHART: Is there anybody here to speak on this item at all?

I'll make a motion that we postpone this for 30 days.

CHAIRMAN KONYK: Will they be ready by then? Can you assure me of that? Should we postpone it for 60? We keep postponing it.

MR. SEAMAN: True. I think 60 days might be a good idea.

VICE CHAIRMAN BASEHART: I'll make my motion to postpone this item for 60 days, that would be to our July meeting.

CHAIRMAN KONYK: We have a motion by Mr. Basehart to postpone item BA2002-011. Do we have a second?

MR. CUNNINGHAM: Second.

CHAIRMAN KONYK: Second by Mr. Cunningham. Is there any opposition? Motion carries unanimously.

The next item on the agenda is the consent agenda, and the first on that is BA2002-020, Gentile, Holloway, O'Mahoney & Associates, Inc., agent for St. Anthony's Building Partnership.

Is the applicant present?

State your name for the record.

MS. MAHR: Wendy Mahr for Gentile, Holloway, O'Mahoney. I'm the applicant.

CHAIRMAN KONYK: The staff has recommended four conditions. Do you understand and agree with those four conditions?

MS. MAHR: Yes, we do.

CHAIRMAN KONYK: Are there any letters?

MR. SEAMAN: No. There are no letters.

CHAIRMAN KONYK: Is there any Board member who feels this item warrants a full hearing?

Is there any member of the public here to speak of this item?

Seeing none, this item will remain on consent.

Next item on consent is BA2002-025, Francesco & Christine Pettinella. Is the applicant present?

State your name for the record.

MS. PETTINELLA: Christine Pettinella.

CHAIRMAN KONYK: The staff has recommended five conditions. Do you understand and agree with those conditions?

MS. PETTINELLA: Yes.

CHAIRMAN KONYK: Are there any letters out?

MR. SEAMAN: No. There are not.

CHAIRMAN KONYK: Any member of the public here to speak on this item?

Any Board members feel this warrants a full hearing?

MR. SEAMAN: There is one change to the conditions. On page 17 there's a date that's incorrect. I'm sorry, a petition that was incorrect. It's item number three on page 17 of the conditions and it should read instead of in order to vest the variance approved pursuant to BA2002-021, it should be in order to vest the variance pursuant BA2002-025.

CHAIRMAN KONYK: Wrong number was on there? Okay. So that's a typo?

MR. SEAMAN: Typo.

CHAIRMAN KONYK: Okay. Any Board member feel this item warrants a full hearing?

Seeing none, this item will remain on consent.

MS. PETTINELLA: That's it. Thank you.

CHAIRMAN KONYK: Wait for your letter.

Next item is the Board of Adjustment time extension 2002-026, Gentile, Holloway, O'Mahoney & Associates.

MS. MAHR: March, Holloway and Mackney (phonetic).

CHAIRMAN KONYK: And there was no advertisement on this, correct? Okay.

There's six conditions which are the original conditions which we already know that you agreed to.

Is there any member from the public here to speak on this item?

Any member of the Board want this removed to consent?

Seeing none, this will remain on consent.

VICE CHAIRMAN BASEHART: Madam Chairman, I make motion that we approve the consent agenda as printed, and that being BA2002-020, BA2002-025 and Board of Adjustment time extension 2002-026.

CHAIRMAN KONYK: We have a motion to approve the consent agenda by Mr. Basehart. Do you have a second?

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Second by Mr. Puzzitiello. All those in favor? Opposed? The motion --

VICE CHAIRMAN BASEHART: For the record my motion included the staff report being the record of the hearing.

CHAIRMAN KONYK: The motion carries unanimously. You can collect your letters and leave. Next item or first item on the regular agenda is SD-106, petition Robert Kenna requesting variances from requirements that all streets be used for access to residential subdivision lots shall be designed and constructed to the minimum local standards established by the subdivision regulations and secondary and tertiary stormwater management and drainage systems be provided for the subdivision in accordance with the subdivision regulation requirements.

Is the applicant present?

Anyone that's going to speak on this item needs to be sworn in by the court reporter, so if you would raise your right hand.

THEREUPON:

THOMAS BARRETT, JEFFREY IRAVANI, THOMAS BAIRD,

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth so help you God?

MR. BARRETT: I do.

MR. IRAVANI: I do.

MR. BAIRD: I do.

CHAIRMAN KONYK: Staff will introduce the item.

MR. CUFFE: This is a subdivision variance agenda item SD-106. It's a petition request for a variance to allow access to three lots of a

proposed seven-lot subdivision to be divided by a new 30-foot access easement to the roadway of approximately 15 feet in width and to eliminate the requirement of the drainage and stormwater systems be provided in accordance with the code to serve the proposed subdivision streets and lots.

Do you want to hear the applicant?

CHAIRMAN KONYK: Is that all you wanted to say?

MR. CUFFE: Do you want a recommendation now?

CHAIRMAN KONYK: No. We'll take the applicants presentation and then we'll get back to you.

MR. BARRETT: My name is Thomas J. Barrett and I'm an attorney and I represent Mr. Kenna. And I know this is a quasi judicial proceeding so for those of you who don't know my background, I want to share just a little bit with you. I used to sit in that chair over there as assistant county attorney and help represent this Board.

I've been a lawyer practicing land use law for the last 15 years. Before that I was a planner and then a certified planner by the American Statute of Certified Planners. I'm currently the chairman of the Treasure Coast section of the American Planning Association and have been for the last two years.

I'm with Mr. Jim Ryan, who's the attorney for Mr. Kenna, and Jeff Iravani, civil engineer and the authorized agent for this project. I'm going to ask that Jeff take you through the project so you can see what exactly is being proposed. He's going to offer some remarks about the design of the roadway and the civil engineering, and then I want to come back and address the criteria regarding the variance as well as respond to the staff report, which we have already received and you have received in which you will be receiving for the comments in regard to this.

I would ask that if after hearing the staff report that you provide me with a brief opportunity to respond to any of those remarks, and I promise you not to abuse my time. Thank you.

MR. IRAVANI: Morning. My name is Jeff Iravani. I'm a civil engineer. I've been practicing in Palm Beach County for the last 20 years. I'll talk this way (indicating).

The project we have here is Kenna Properties, approximately eight-acre parcel in Seminole Landing. We are proposing seven lots, three, two and two. This lot has an existing house on it already existing. The location is Seminole Landing basically off -- north of PGA and south of Donald Ross Road.

We originally started this project in October, November of last year and we knew that we could not meet the subdivision requirements for access and drainage at this time, so we had several meetings with Mr. Rogers of land development. When we started it, I think we looked at the surrounding project and realized -- and we saw that the other projects also have the same kind of, I guess, exemption or variances that you're asking for.

The first variance that you're asking for is for access, subdivision section for access, has to do with the width of the roadway and also the requirement for a 50-foot driveway.

Let me go back. The Banyan Road that serves this property, it's about a half a mile or so, it is a 15-foot roadway. It's not County standard. And the roadway that we are proposing, this road right here, which serves this three lots, is also 15 feet wide, which is the same as Banyan Road.

In our discussion with land development, they didn't really have any concern about Banyan Road, which is an existing road that is 15 feet, but the question was whether -- what process we need to go through and what we need to get to construct this road which is 15 -- which is not a 50-foot

driveway. If you go by County standard, you have to go to 50 foot right-of-way, 20 foot of pavement and two sidewalks.

Our restraint here is we have title water which is outlined in blue. And there's a cover crossing title -- also to the north, we have a covered crossing and we just simply cannot put a 50 foot right-of-way through here. There's also protected vegetation, mangrove and so forth in here, which would have to be destroyed if we put a 50-foot right-of-way section through there.

In our discussion we were told to look at the other project to see what they had done because they have the same exemption. So we look at the Sea Acres Road, which is a five-acre, four lots project. That was approved in '93. And they basically got the same thing we're asking for except they went through the engineering exemption. They got an exemption for drainage and access road and they built actually a 12-foot road to serve these four lots.

We provide the same document and arguments, but then it was an engineering feeling that since we were adding three lots and they only added two, that they could not give us an exemption through an administrative process and we have to go through a variance process, and that's what we are here for.

What we have -- of course I explained about the access road, why we cannot get immediate variance. For the drainage variance that you're asking for, we are providing water qualities on these lots, so from an aspect of environmental impact, it won't be negative. The water quality, which basically retains first inch of water which supposedly has pollutants, will be retained on these lots.

The rest of requirement for drainage, which includes a localized lake or a dry retention, we can't provide that because these lots are separated by natural barriers and roadway. We can't drain this parcel all the way down here without going through a title pool or going through the Banyan Road. So that's the reason we're asking for drainage requirement variance of a subdivision. But again, we are providing water quality so there will be no environment impact.

In addition to that, we spoke and contacted fire rescue, and I have an approval from fire rescue for the roadway section that they're provided, and I would be glad to provide you with copies of that. We also had discussions with residents to the west and they mentioned to us that they'd like to have some landscaping in this area to give them some buffer from any vehicle, and we have agreed to that and the attorneys are going through the approval.

And I'm going to give you the eight and a half volume copy of the landscaping that we're proposing to put in this area to provide some buffer. Even though it's not a variance issue, I'd like to bring it up to the neighbors.

CHAIRMAN KONYK: Okay. We'll hear from Mr. Jacobs.

MR. JACOBS: He said he's not done.

MR. IRAVANI: I'm done. I have the actual landscape plan here larger. I apologize for that one being very small. But I'd be glad to give you a species, and what you have. These are basically live oaks and sable palms and the hedges are cocoa palms and ficahatchee.

CHAIRMAN KONYK: Good.

MR. IRAVANI: Did I say it right?

CHAIRMAN KONYK: It should be pretty.

MR. IRAVANI: Thank you.

MR. BAIRD: Thomas J. Baird, T-h-o-m-a-s.

CHAIRMAN KONYK: I didn't mean the first name, the last name.

MR. BAIRD: B-a-i-r-d, middle initial J.

The code requires a 50-foot right-of-way and 20 feet of pavement. These variances are to allow a 30-foot right-of-way, and 15 feet of pavement. And essentially what this allows is the continuation of the roadway that now exists so that the alignment of that roadway, character of that roadway and pavement of that roadway will be consistent with what already exists in this neighborhood.

Amongst the codes general design consideration, there's the need for continuity of existing and planned streets, and in that sense this variance would enable that continuity to continue.

There's also a reference in the subdivision code to the barriers and codes by typographical features and their effect on the public convenience and safety.

The variance would allow the roadway design to comply about the typographical features, which include, as you've heard, the titling influenced area and also some heavy vegetation in that area of this roadway.

There is another general design consideration that the subdivision code references,

and that is the need for a continuation of existing local streets in areas that have not yet been subdivided. And again, the variance would enable the subdivision to meet this particular criteria of the general design criteria.

Without the variances, there will be a discontinuity amongst the streets, and particularly the street that would tie into this street. The barrier which now exists in the form of a land bridge would have to eventually be eliminated or expanded to the point where it wouldn't be functional and there not be a continuation of the streets for the subdivision.

The variances enable this area to be subdivided into lots that would comply with the existing character in terms of lot size for this area. In Seminole Landing there is great concern as there are in other areas with proximity of water of the over building of structures on lots and of the creation of what some refer to as mansion structures on lots.

If the property is not subdivided, what will result is four -- either three or four very large lots, which could allow the applicants for building on those lots to develop structures which are much larger and much out of character with the existing neighborhood. That was a reason for some concern by neighbors that had contacted us in regards to this variance because they wanted to know what was going on in this area and that was one of their concerns.

The existing road, as Jeff mentioned, that this road will essentially continue, is currently a non-conforming road, and currently the size of the road that we're proposing to continue through the plan is not yet subdivided. When we look at the criteria, the criteria includes the uniqueness of the property and this property does have unique characteristics. And it's recognized in the staff report because of its substantial areas of title waters, its connection to the Lake Worth Lagoon and it's limited land access with respect to the property that exists and the property that's already been developed.

The physical -- the hardship here is not one that's been self-created. The physical constraints of this site already exist. Those constraints weren't created. Certainly a subdivision is intended to be created but a subdivision or a continuation of the subdivision will exist whether this property is subdivided or not.

The only result is there will either be larger lots that do not conform with the existing character of the neighborhood or through subdivision lots that do conform with the character of the neighborhood will be created.

There's no special privilege that's being requested here or conferred upon that that -- in fact, it's just to the contrary, and there's no minimum variance. This is the minimum variance that's necessary to enable the subdivision to be created and keeping with the character.

If the variances are not approved, there will be special privileges created for this property owner in that the lots that will be developed will be lots that will be developed with super structures on them that will be inconsistent with characters of the neighborhood and inconsistent with the desires of the public and the residents of this neighborhood.

So with respect to the public welfare criteria, the last criteria in the code, at your last meeting which this application was postponed, I believe Mr. Perry was here representing Mr. Lytal and Mr. Reiter and also perhaps Judge Gross, Mr. Ryan and I both had conversations with Mr. Perry. His clients have no objections to these variances. Their objections were basically that they did not understand what the plan was.

They thought that the plan was to create structures that were out of character with the neighborhood. When we explained the plans to them, they understood what we were doing and they dropped any and all objections that they had. These applications or this application has the support of the Banyan Road Homeowners Association, which is an association within the subdivision, the Seminole Landing Homeowners Association and the Lost Tree Homeowners Association, which is adjacent to this community.

The reason why these communities all support the variance is because they want to see the character of the roadway that runs through this subdivision to continue. And I have some photographs that I'd like to distribute which shows the character of this subdivision and this roadway and it shows you the area which is to be developed as a roadway.

CHAIRMAN KONYK: I'll accept that into the record and also the landscaping plan.

VICE CHAIRMAN BASEHART: Motion.

CHAIRMAN KONYK: Motion by Mr. Basehart.

MR. CUNNINGHAM: Second

CHAIRMAN KONYK: Second by Mr. Cunningham. Motion carries unanimously.

MR. BAIRD: Both those numbers one and two show the current non-conforming roadway, which extends through the subdivision and which would continue in the same character if these variances were approved so as to serve the lots that are being subdivided.

Photos three and four show the area where the roadway would continue.

Photo number five is another photo that shows the character of the existing nonconforming roadway and the character of the roadway that the residents of this community have demanded and solicited from us in terms of our development of the seven lots within the subdivision that we're proposing.

Lastly in terms of variances, the code defines a variance as a deviation from certain standards of the code which would not be contrary to the public interest. And I submit to you that given the agreement of the Banyan Road Homeowners Association and Lost Tree Homeowners Association, Seminole Landing Homeowners Association and any other residents that live in this community that the granting of these variances would not be contrary to the public interest and therefore would not be contrary to the definition of area variances and therefore would not be contrary to the purpose and intent to approving variances to allowing the development of property that might not otherwise be developed in the character in which the community wishes to see it.

With that, I'm available to take any questions from you all.

CHAIRMAN KONYK: We'll hear from staff before we hear questions.

MR. BAIRD: Thank you.

MR. CUFFE: The engineering department is recommending denial of these variance requests based on the failure of the applicants to demonstrate substantial conformance with the standards for granting of these variances. Most particularly, as outlined in the staff report, particular items would be that the standard for the unique situation not being a self-created condition.

The variance requested itself is a necessitated solely by the applicant's desire to further subdivide the two existing lots to create seven total lots in an area which is not currently served by adequate infrastructure to meet the code requirements. And the applicant came to the situation, purchased the property, and had the applicant made or has made a review of the subdivision regulations, purchased the property and came to that situation and is requesting the variance having purchased the property creating the condition, purchased the property with the intent to subdivide knowing full well the variances would be required -- the significant variance would be required for subdivision.

The question of undue hardship while requiring conformance with the code requirements for provision of access and drainage systems may preclude further subdivision of the property as proposed. There is nothing to prevent the applicant from utilizing the two lots -- although one is a considerably larger lot than is generally found in the area, there's nothing to prevent him from developing those properties as two lots as they were actually purchased.

As far as the minimum variance goes, we do not feel that a minimum variance request -- we believe they are two full sections of the code. There was no specificity as to the particular design requirements being requested for relief and granting of the variance as specifically requested would allow the applicant to use his total discretion in providing access and drainage without any requirement being imposed or having to meet any requirements at all imposed by the code.

And as far as the code is intended, the code is intended to ensure provision of safe, maintainable vehicular and pedestrian access to subdivision lots with adequate drainage to meet the levels of protection from street flooding as required by the Comprehensive Plan and ensure that there's a suitable entity for having maintenance responsibility for the streets and drainage system.

Granting the variance would not only allow additional lots to be created on an existing nonconforming street but would increase the nonconformity by allowing creation of additional non-standard street access to serve three of the lots. There's no overall recognized association to maintain the access to this property. The major issue here is not only perpetuating a non-conforming condition but expanding on a non-conforming condition.

CHAIRMAN KONYK: What about the mangroves that he was mentioning, is that a concern?

MR. CUFFE: There are definitely wetlands on the property but it's basically no different from any of the other properties down through there that have that same feature. And there again, the feature was fully known and recognized when the purchase of the property was made.

CHAIRMAN KONYK: But he would not be allowed to remove those; is that correct?

MR. CUFFE: That's something -- there may be constraints on that imposed by the court of engineers and by ERM or DEP.

CHAIRMAN KONYK: Can I ask Mr. Iravani a question? You mentioned the mangroves, are they on both sides of where your proposed road is?

MR. IRAVANI: Exactly. They're on this title four on both sides, so a 50-foot section, sidewalk and so forth certainly not that only cut the title but it will destroy mangroves.

MR. PUZZITIELLO: Banyan is a publicly owned road?

MR. CUFFE: No. Banyan is a private easement. It's a private easement road that comes out from Seminole Road and serves several properties to the north of this and several properties to the south.

MR. PUZZITIELLO: So right now it's being maintained by the properties you have?

MR. CUFFE: By the property owners by some kind of an ad hoc maintenance agreement.

CHAIRMAN KONYK: And that Banyan Road would have been the access to the remaining two lots.

MR. CUFFE: Right.

CHAIRMAN KONYK: There's two of them but I'm saying if that wasn't subdivided, Banyan Road, is that the division between the two lots, the current lots?

MR. IRAVANI:

This is Banyan Road.

CHAIRMAN KONYK: Before you subdivided this, is it on one side of Banyan Road was one lot and the --

MR. IRAVANI: Right. This is one lot and this the other.

CHAIRMAN KONYK: Okay. So they would have had a 15-foot access?

MR. CUFFE: In the existing condition, Banyan Road would have served as both for the existing lots.

CHAIRMAN KONYK: And how big are the new lots, just out of curiosity?

MR. IRAVANI: They're an acre plus.

CHAIRMAN KONYK: So one was five acres and one was about two?

MR. IRAVANI: Actually -- these right now?

CHAIRMAN KONYK: Currently.

MR. IRAVANI: Currently, I think this is probably about a couple of acres, probably about six acres.

CHAIRMAN KONYK: Okay. Does anybody else have any questions for the applicant or staff?

MR. JACOBS: I have a question of the applicant. What's the anticipated selling price of the lot?

MR. BAIRD: I guess Mr. Ryan would have the answer to that.

MR. RYAN: 1.2 million dollars per lot.

MR. BAIRD: I wanted to address a couple of issues that came up in Mr. Cuffe's presentation. First of all, with respect to the mangroves. In order to comply with County's code requirements and create a right-of-way of 50 feet with 20 feet of pavement, we would have to take out mangroves on either side of that area. That's one of the reasons for requesting the variance and one of the unique features of the site that gives rise to the need for the variance.

It seems to me to be more in the public interest to preserve those mangroves by granting a variance than it would be to require an applicant to go through a process that would require either the removal or destruction of mangroves or mitigation of mangroves. Although mitigation is an accepted practice by some, I think it's always preferred that if you can preserve a habitat that you preserve it.

Secondly, with respect to the maintenance of the roadway and the association, it's not correct that this is an ad hoc association. Banyan Road

Home Owners Association is a legally created association with a declaration of covenants and restrictions which will assume responsibility to this road.

They're waiting on your decision with respect to the variance because their concern is if they have to undertake the removal of the mangroves, if they have to create a situation where they have lots that are created that are out of keeping with the character of the community, then they don't want to encourage that. But if they can be assured that the roadway is not going to result in the destruction of mangroves and that the lots are going to be in keeping with the general character of this community, then they are -- then they have given us their affirmation that they will take on the responsibility for maintaining this roadway.

We will not be -- we are not seeking total discretion with respect to the development of the roadway and the right-of-way and the drainage. Certainly there's going to be a level of review that occurs by the County with respect to what's being proposed by Mr. Iravani and certainly there's going to be a dialogue with respect to what practices are acceptable and which are not. It's not like the granting of a variance today means that we go out and put a road in willy-nilly any way in which we desire it take care of the drainage of any way we desire. It's our intention and it has always been our intention to work with the County staff with respect to that.

In fact, there's a subdivision application that would require us to meet the standards. What is being asked for today is -- there are two standards which cannot be met because of the unique characteristics of this site. All we're asking is relief from those two standards. All the other standards of County subdivision code have to be met with respect and is being met with respect to the subdivision application.

I don't want you to think that this is a wildwest subdivision where anything goes. It's certainly not. But there are certainly physical constraints with respect to this property, and because of those constraints, variances are necessary.

MR. JACOBS: Excuse me, sir. At the time your client bought the property, he was aware that the property couldn't meet the subdivision standard?

MR. BAIRD: Mr. Ryan will have to answer that because I wasn't representing the client when he purchased the property.

MR. JACOBS: I'd like somebody to answer it.

MR. RYAN: Yes, sir. When the property was purchased, the owner of the property had recently subdivided Sea Acres Way and Sea Grape Landing both on the same street, and we investigated whether or not this property could also be subdivided by talking to the same planner that pursued that application.

The gentleman told us the process that he went through and gave us the impression and the feeling that if we followed the same process and application that we could obtain the same results.

When we came to the County to do that, the response was that, yes, that was done, but that was then and this is now and we view the code differently now.

Not that the code was different but that the County views the code differently now than when those previous applications were done. So therefore, we had to go through this process as opposed to the process for Sea Acres Way.

The owner did perceive that the property could be developed consistent with the property in Lost Tree Village and in Seminole Landing when he purchased the property. Incorrectly or correctly, I don't know.

MR. PUZZITIELLO: If they were to be forced to have the 50-foot right-of-way for the division of this subdivision, you're saying that they'd have to take Banyan, the part that goes through that subdivision, and

make that a 50-foot right-of-way and title up on both sides and leave Banyan in its existing condition on both sides in its 15-foot state; is that correct?

CHAIRMAN KONYK: The new road would have to be a 50-foot right-of-way?

MR. PUZZITIELLO: The whole subdivision that Banyan goes through would have to --

MR. CUFFE: What we're saying is that for the subdivision or for the subdivision to be approved, it would require street access in accordance with the subdivision regulation. The question from that standpoint is whether or not this property should be subdivided as shown.

MR. BAIRD: Can I address that question? If we're required to put a 50-foot right-of-way in here, then Banyan will have to be extended all the way to Seminole Beach Boulevard in a 50-foot right-of-way, which is going to result in the expansion of that right-of-way into approximately 20 lots. That's clearly something that unless we acquire the right-of-way from those 20 lots is not going to be possible, and that's another reason why the individuals that live in this neighborhood don't agree with the variance request and they don't want to see a 50-foot right-of-way.

CHAIRMAN KONYK: They do agree with the variance request?

MR. BAIRD: Yes, they do, because they understand that not only is the roadway going to be out of character, but in order to comply with the County standards, we have to document them and say, can we purchase 20 -- 10 feet on either side of the right-of-way we're proposing from those neighbors, which is an unlikely scenario that they would ever be willing sellers.

And what that does in terms of variance law, there's a provision in variance law that says if the granting -- if the refusal to grant a variance essentially renders the development undevelopable, then the board that's taking that action has taken an action that the law views as a taking because the property owner is not able to develop.

CHAIRMAN KONYK: It's not undevelopable. You can develop it the way it currently is. You can have two lots. That's maybe correct in other circumstances but you still have developable land here, you're just not able to subdivide it. You can still develop it. Am I correct, Dave?

MR. CUFFE: Yes, or subdivide it within the limits the County engineering and the land developing director feel within their discretion will allow minimal relief from the code requirements.

VICE CHAIRMAN BASEHART: That's one thing I don't understand. What I heard in the discussion was that waivers or whatever you call them have been granted in this development in the past to allow properties to be split from one into two properties, and that's been done administratively.

MR. CUFFE: There have been administrative approvals for plat waivers and for the plat of Sea Acres in that area. From what the division of directors informed me, the reason he felt he had the discretion do allow in the Sea Acres development because of the existing access to the -- the existing access and the existing easement access to the properties in Sea Acres, he felt that he had the administrative discretion to approve that without further improvements to the road.

He does not feel he has the administrative discretion to approve this amount of subdivision and the additional creation of a new easement. The expansion of those conditions --

VICE CHAIRMAN BASEHART: The way I see it is it's been felt by the staff administratively that dividing several pieces in here into two lots was within their discretion. And I understand that and it was a reasonable thing to do because of the established character of the subdivision and the fact that you can't increase, you can't expand the access to the development because it's

been established many, many years and, I mean, to change the main roadway, Seminole, to a 50-foot right-of-way and repave it would destroy the ambiance of that entire community. So it's been felt that administratively as long as we're dealing with just small pieces splitting one into two lots is okay, and I understand that the director may feel that he doesn't have the discretion to do it in larger pieces of property or for more lots, but I don't think it changes the rationale for granting the approval.

While I understand and agree with the administrative changes, adjustments, that were allowed, I don't see any difference in end result and in justification between that and what they're asking for here. And the only difference is the number of lots we're talking about. I don't understand why the engineering department would approve those other ones in several circumstances and then not support this one. That's what baffles me.

MR. CUFFE: The distinction is the creation of additional street access or additional easement access to serve the lots as opposed to an act that utilizes only existing accesses in that area.

MR. PUZZITIELLO: So all the other exceptions were done because they were all parallel with the street and they did not have to --

MR. CUFFE: Right, and had existing access in Sea Acres that there was existing access to the east already.

VICE CHAIRMAN BASEHART: Unless anybody has any questions that they would like to ask the applicant or anything they would like to say, I'm ready to make the motion. Do you have a question?

MR. JACOBS: Yes. As I see this, the whole thing is as the Chairperson just stated, you can develop your property just as it exists right now, it's just a question, you'll get two less lots out of it. Isn't that essentially it?

MR. IRAVANI: Two lots versus seven lots.

MR. JACOBS: But you could get five out of it.

CHAIRMAN KONYK: No. It can have the existing two or if he's granted the variance, he can have seven.

MR. PUZZITIELLO: Or he can get four, two on one side and two on the other.

VICE CHAIRMAN BASEHART: Based on previous administrative actions if he just asked to administratively have the waiver done, he could get four. The problem is it hasn't been discussed during the presentation. But if you look at that property, because of that title pool, you'd be dividing that one lot into two lots where the majority of the lot would be totally unusable.

MR. IRAVANI: There's to access across here.

VICE CHAIRMAN BASEHART: Right. There's no access across there so you'd have two lots and the lots could go all way to the back of the property but you couldn't get to them. At any rate, after having listened to the presentation --

CHAIRMAN KONYK: I have one more question. Where the blue is, that's going to be water?

MR. IRAVANI: Title water. The whole thing is water. The whole thing is a title pool.

CHAIRMAN KONYK: So if that was two lots, how would you develop it?

MR. IRAVANI: You can't access across the title pool. Right now it's one lot.

CHAIRMAN KONYK: If that remained as one lot, how would you develop that?

MR. PUZZITIELLO: Put a driveway along the north end of it.

VICE CHAIRMAN BASEHART: But you couldn't build on it?

CHAIRMAN KONYK: You could build on it but you'd put -- they'd call it a driveway instead of a road because it's would be going to one house.

MR. PUZZITIELLO: You could put one along the street and one which is a small sliver of land on the street.

MR. RYAN: One lot on this side of Banyan Road and one lot on this side of Banyan Road. That's what --

MR. PUZZITIELLO: That's what it is now. That's what it is existing.

MR. RYAN: Right.

MR. PUZZITIELLO: What I'm saying, you could divide it into two and take everything on the left side is water and the strip along the top where the roadway is now as one piece of land, make that one lot, and everything on that right side of the water between the water and Banyan and make that a second lot. Is it practical? I don't know, but it's possible.

VICE CHAIRMAN BASEHART: And the problem, although they may be willing to grant that relief administratively under the subdivision code, now you can't even split a lot once without it going through the plat, so he'd be back in the subdivision process and he's been trying to create two lots out of one with only 30 foot access.

MR. IRAVANI: May I elaborate on Sea Acres. The Sea Acres grove here was actually a four acre subdivision of four lots, five acres, and this is access to it. Actually this was paved and this is a new road and this is all a new road and that's then it was administratively approved. It's actually a 12-foot pavement and a 30-foot -- and there were four lots and five acres that was approved previously.

MR. PUZZITIELLO: So the lot that you have on the east side of Banyan is divided by an access route?

MR. IRAVANI: That's correct. It is access to Sea Acres and there are four lots in here that were granted. Same thing we were asking for administratively.

MR. PUZZITIELLO: But you already have two separate pieces of land on that side of the road anyway.

MR. IRAVANI: It's only one lot.

MR. PUZZITIELLO: Legally it is but with an access easement through the center of it. You sort of ruined it.

CHAIRMAN KONYK: I would say that one of the biggest considerations that I would see here is the fact that this is undeveloped land and there's no opposition from the people that have already developed the land, and anybody that would be buying property there would know of it before they bought it because it was existing. We wouldn't be pushing any surprises on any homeowners that say I didn't realize this was going to happen or wasn't going to happen, I should say. They would be fully aware that was only going to be a 15-foot access.

MR. IRAVANI: Exactly.

VICE CHAIRMAN BASEHART: I don't know that we need any more discussion. I'm ready to make a motion. I'd like to make a motion that we approve the variances requested. I believe that the applicant has demonstrated compliance with the other criteria and code to warrant the approval of variances, and I think the situation here -- it is a unique circumstance, and I think that parcel has to be treated as an infill parcel.

The entire community as been established and developed over a long period of years in a character that I think has been very nice. You saw the pictures. I don't think that character should be destroyed. I think the established roadway access arrangement that's been established and granted in many administrative approvals to continue over the years, it should be allowed to represent the completion of the development as well.

And I think the lot sizes that are being proposed and the means of access, via a 15-foot road and a 30-foot right-of-way, is entirely consistent with what the rest of the entire development has been approved at. And beyond that, I see absolutely no hardship or I mean no negative impact being created by the approval of the variance.

It's the same as what everybody else has and it will allow the development of this property with minimal impact to the mangrove area and to the title pool, and I think that's a justification as well. So for those reasons, my motion is for approval of the two variances requested.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Basehart for approval.

MR. PUZZITIELLO: I'll second that. I just want to have one clarification from the attorney. This property is part of the Banyan Road Homeowners Association and Property Owners Association.

MR. RYAN: My name is Jim Ryan, and in addition to being Mr. Kenna's lawyer, I am also the lawyer for the Banyan Road Homeowners Association.

And the Banyan Road Homeowners Association has entered into an agreement with Mr. Kenna that if this is done that they would like to have the property in their association and he would like for it to be in their association. So whether it will be in the association is subject to the result of today. If the variances are granted, the property will become member of the association.

MR. PUZZITIELLO: And they will accept all maintenance of that road?

MR. RYAN: Yes, as they have for the balance of Banyan Road.

MR. PUZZITIELLO: I'd like to ask Bob to make the condition to the motion that it does become part of the Banyan Road Homeowners Association.

CHAIRMAN KONYK: Amend the motion.

VICE CHAIRMAN BASEHART: I accept that. I'll amend the motion placing a condition requiring that the roadway be -- that the property be part of the Banyan Association and that the roadway maintenance be accepted by the association.

CHAIRMAN KONYK: We have a motion by Mr. Basehart that's been amended. We have a second by Mr. Puzzitiello. Is there any further discussion?

I'd like to make a comment on it. I moved to Florida 25 years ago and I think in all respect to Mr. Cuffe, I think it's refreshing to see that there are communities that are going to remain and be a little different. They're not going to be the same with the same requirement and the same streets and the same sidewalks and I think it's a wonderful, wonderful project and I'm voting in favor of the motion.

So do we have any opposition on this motion? All those in favor say aye. Motion carries unanimously.

STAFF RECOMMENDATIONS

Approval with conditions, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

Analysis of Article 5, Section 5.7.E variance standards.

1. Special conditions and circumstances exist that are peculiar to the parcel of land, building structure that are not applicable to the parcels of land structures or buildings in the same district.

YES. This property has unique circumstances that need to be considered when applying the literal intent of the landscape buffer provisions of the ULDC. The property currently supports a vacant structure that

as previously utilized as a bowling alley. The applicant is proposing to renovate the building and meet current landscape code requirements. The existing right-of-way buffer has dense, mature vegetation that will be maintained and improved to meet current landscape code requirements. The requested variance is for a reduction in the right-of-way buffer along a 125-foot section of the existing right-of-way landscape buffer.

2. Special circumstances and conditions are the result of actions of the applicant:

NO. The requested variance is not a self-created hardship. The existing right-of-way buffer complied with the requirements at the time of construction. The special circumstances are due to the existing parking lot on site. The applicant is required to provide 383 parking spaces for the indoor entertainment use. Removal of the existing parking lot to accommodate new landscaping would result in a loss of 7 required parking spaces and require a parking space variance. The 125 foot buffer section is also limited by two utility easements that are 12 feet apart. Denial of the requested variance would require the applicant to seek a variance for encroaching into an easement greater than 5 feet.

3. Granting the variance shall confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district:

NO. Granting the variance will not confer special privileges upon the applicant that would be denied similar sites. The applicant is proposing to redevelop an existing building and has triggered landscape provisions based on the size and value of renovations. The applicant has worked with staff in redesigning the site to minimize the need for a variance. The variance request is for a reduction in the width of a 125-foot section of the existing right-of-way landscape buffer along Vista Parkway, and will meet the intent of this Code.

4. A literal interpretation and enforcement of the terms and provisions of this code will deprive applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship:

YES. A literal interpretation of the code would be an unnecessary and undue hardship on the applicant. The applicant is proposing to redevelop an existing building and is proposing to provide additional parking during a second phase of development. Removal of the existing parking lot to accommodate new landscaping would result in a loss of 7 required parking spaces and require a parking space variance. The 125 foot buffer section is also limited by two utility easements that are 12 feet apart. Denial of the requested variance would require the applicant to seek a variance for encroaching into an easement greater than 5 feet. The requested variances will allow the applicant to redevelop the existing site. The requested variance is mitigated by the existing mature vegetation, and will not be injurious to adjacent parcels or the general public.

5. The approval of the variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

YES. Granting the requested variance is the minimum variance that will allow the use of the parcel of land. The parking lot exists and is required to serve the proposed indoor entertainment use. The existing site supports dense, mature vegetation that will be maintained to meet current landscape code. The landscape buffer width along Vista Parkway will vary from 15 feet to 20 feet. The existing landscaping and proposed improvements meet the intent of the ULDC to provide a buffer between the parking lot and the R-O-W.

6. Grant of the variance will be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code:

YES. The granting of the requested variance is consistent with the purposes of the Comprehensive Plan and Code. The requested variances will allow the site to be redeveloped to accommodate an indoor entertainment use. The existing site has dense, mature vegetation that will be maintained and improved to meet current landscape code. The landscape buffer width will vary from 15 feet to 20 feet. The existing landscaping and proposed improvements meet the intent of the ULDC to provide a buffer between the parking lot and the R-O-W.

7. The grant of the variance will be injurious to the area involved or otherwise detrimental to the public welfare:

NO. Granting the variance will not be injurious to the surrounding area. The requested variances are the minimum necessary to allow redevelopment to occur on site. The existing dense and mature vegetation and proposed improvements adequately screen the parking area from the R-O-W. The surrounding parcels have similar buffers or are undeveloped. The intent of the right-of-way buffer is to mitigate the structure's appearance from the street. The existing buffer has mature vegetation that provide a solid visual buffer. The variance request is for a 125-foot section of the existing internal Vista Parkway right-of-way landscape buffer, and will meet the intent of this Code, if granted.

ENGINEERING COMMENTS

No comments.

ZONING CONDITIONS

1. The Development Order for this particular variance shall lapse on May 16, 2003 one year from the approval date. The applicant may apply for an extension provided they complete the time extension application, prior to the original Development Order expiring. (DATE: MONITORING-ZONING)

2. The final site layout of the Vista Center of the Ice Center shall be consistent with BA Site Plan, Exhibit 9, and all BA conditions of approval. (ONGOING)

3. By February 15, 2003 the applicant shall provide the building Division with a copy of the Board of Adjustment Result Letter, a copy of the certified DRC Site Plan, and the building permit application. (DATE: MONITORING-BLDG PERMIT)

4. By May 16, 2003, the applicant shall obtain a building permit for the proposed renovations in order to vest the right-of-way landscape buffer variance approved pursuant to BA2002-020. (DATE: MONITORING-BLDG PERMIT)

MR. IRAVANI: Thank you.

MR. RYAN: Thank you, very much.

CHAIRMAN KONYK: We have to the attendance report for the last meeting. Everybody was present and Ms. Misroch, he's an alternate, he was not required. Mr. Misroch, M-i-s-r-o-c-h.

Motion for approval by Mr. Cunningham. Second by Mr. Basehart.

VICE CHAIRMAN BASEHART: Sure.

CHAIRMAN KONYK: All those in favor. The motion carries unanimously and we are adjourned.

C E R T I F I C A T E
THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Robin J. P. Riley, Notary Public, State
of Florida at Large,

DO HEREBY CERTIFY that the above-entitled
and numbered cause was heard as hereinabove set out; that
I was authorized to and did report the proceedings and
evidence adduced and offered in said hearing and that the
foregoing and annexed pages, number 4 through 20,
inclusive, comprise a true and correct transcription of
the Board of Adjustment hearing.

I FURTHER CERTIFY that I am not related to
or employed by any of the parties or their counsel, nor
have a any finanacial interest in the outcome of this
action.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this _____ day of June, 2002.

Robin J.P. Riley,
Notary Public

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, May 16, 2002
9:02 a.m. - 9:50 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:
Robin J.P. Riley
Notary Public